

Transport Legislation And Another Act Amendment Bill 2006

Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Paul Lucas MP

Title of the Bill

Transport Legislation and Another Act Amendment Bill 2006

Objectives of the Amendments

Amendments to the immediate suspension and disqualification provisions in the *Transport Operations (Road Use Management) Act 1995* (TO(RUM) Act) are designed to:-

- ensure that the provisions include drug driving offences;
- ensure that the provisions relate only to motor vehicle offences;
- clarify when conditions relating to a section 79E order apply;
- clarify the sanctions that apply to a person who is disqualified for an offence while they are subject to a section 79E order; and
- clarify the interaction between the 'rules of court' and provisions in the *Transport Operations (Road Use Management—Driver Licensing) Regulation 1999*.

A number of amendments relate to special hardship orders, provided for under the TO(RUM) Act, and are intended to clarify:-

- that general appeal provisions in the Act do not apply in relation to suspensions based on the accumulation of demerit points or high speed offences; and
- the effect of these orders in relation to applications under section 87 of the TO(RUM) Act.

Further amendments relate to provisions within the Bill associated with saliva testing of drivers for certain drugs Those amendments will:-

- remove or clarify references to 'doctors' and 'health care professionals' with respect to the taking of saliva specimens; and
- insert a reference to the new drug driving offence in section 328A of the Criminal Code as a 'prescribed offence'.

Further miscellaneous amendments will:-

- clarify certain defined terms; and
- clarify that provisions in the Act relating to alcohol and drugs apply to learner, provisional and probationary drivers who hold a licence issued outside of Queensland.

Estimated Cost for Government Implementation

There will be some administrative costs to Queensland Transport as a result of the amendments to the TO(RUM) Act. These will be absorbed within existing budget allocations.

Consistency with Fundamental Legislative Principles

The extension of the immediate suspension provisions may breach fundamental legislative principles. The amendment is, however, expected to enhance road safety for the benefit of the entire community. This benefit outweighs any restriction on the charged person's ability to drive.

Consultation

The Department of the Premier and Cabinet, the Department of Justice and Attorney-General and the Queensland Police Service have been consulted on the proposed amendments.

Notes on Provisions

Amendment 1 inserts a new Part 1A into the Bill to amend section 328A of the Criminal Code. This amendment will clarify that a 'prescribed offence', as referenced in section 328A(3) and defined in section 328A(5), includes the new offence under section 79(2AA) of the TO(RUM) Act. That new

offence, to be inserted by clause 55 of the Bill, applies to a person who drives while a relevant drug is in their blood or saliva.

Amendment 2 amends clause 53 of the Bill which inserts a new definition of 'provisional licence' into the TO(RUM) Act. The new definition is designed to clarify that a provisional licence may be subject to conditions, including restrictions, imposed because of the holder's age or limited driving experience. The current definition in the TO(RUM) Act refers only to conditions imposed because of the holder's limited driving experience. This amendment will remove from clause 53 additional information about a provisional licence that does not need to be included in the definition of that term.

Amendment 3 amends clause 55 by inserting new subsections (3A) and (3B). Subsection (3A) will insert a new section 79(2BB) into the TO(RUM) Act. This amendment will clarify that, for the purposes of section 79(2A), a learner, probationary or provisional licence includes a corresponding licence issued outside of Queensland. Subsection (3B) amends section 79(2J) of the TO(RUM) Act to clarify that the existing zero blood alcohol limit that applies to a person who is driving under a section 79E order will apply in relation to any licence held by that person during the period of the order. For example, the zero blood alcohol limit will continue to apply where a person, during the term of the section 79E order, obtains a new licence after the expiry of their previous licence.

Amendment 4 inserts a new subsection (1A) into clause 56 which, in turn, inserts a new subsection (1)(a) to section 79B of the TO(RUM) Act. This amendment will extend section 79B to apply to any person charged under section 79(1) with an offence committed while under the influence of liquor or a drug. Currently, this provision is limited to a charge under section 79(1) with respect to liquor and when the person is given an analysis certificate in relation to the offence indicating the person was over the high alcohol limit.

Amendment 5 amends clause 56 by inserting new subsections (3), (4) and (5). New subsection (3) inserts a new subsection (1A) into section 79B of the TO(RUM) Act. The purpose of this amendment is to clarify that section 79B only applies in relation to charges mentioned in section 79B(1)(a) to (ca), where those charges involve driving a motor vehicle, attempting to put in motion a motor vehicle or being in charge of a motor vehicle. New subsection (4) replaces, for ease of reading, the term "an order under section 79E" as it appears in section 79B(5)(a) with the term "a section 79E order". Subsection (5) deletes the definition of "section 79E

order" from section 79B(7) as that term is to be defined in Schedule 4 of the TO(RUM) Act (see amendment 20).

Amendment 6 inserts new clauses 56A, 56B and 56C into the Bill. Clause 56A amends section 79E(2) of the TO(RUM) Act to enable a section 79E order to apply in relation to any Queensland driver licence held by the person during the period of the order. Clause 56B amends section 79F(1) and 79F(2) to replace the reference to "an order under section 79E" with "a section 79E order". This mirrors the amendment to section 79B(5)(a) outlined above.

Clause 56C inserts new section 79G into the TO(RUM) Act. This amendment applies where a person is disqualified for any reason from holding or obtaining a Queensland driver licence while a section 79E order applies to the person. If the period of disqualification ends before the charge which led to the initial immediate suspension is finalised, the person will remain disqualified until that charge is finalised.

Amendments 7 to 15 amend various subsections within clause 57. Clause 57 amends section 80 of the TO(RUM) Act by inserting provisions to enable saliva and blood testing of drivers for certain drugs. It is proposed that the collection of saliva specimens for testing will be undertaken solely by police officers. Many of the new provisions mirror or expand existing provisions that apply in relation to breath testing for alcohol. These amendments will remove any inappropriate references to 'doctors' or 'health care professionals' from provisions dealing with the collection and testing of saliva specimens.

Amendment 16 amends clause 59 by inserting a new subsection (1A) which, in turn, amends section 86(2)(e) of the TO(RUM) Act. This amendment complements the amendment described above to section 79(2J) (see amendment 3) and ensures that the disqualification period specified in section 86(2)(e) applies to a "section 79E driver" as defined in Schedule 4 of the TO(RUM) Act (see amendment 20).

Amendment 17 amends clause 60 by inserting a new subsection (2) which, in turn, inserts a new paragraph (f) into section 87(5B) of the TO(RUM) Act. Section 87(5) sets out the eligibility criteria for applications under section 87 for a restricted licence by a person who has been disqualified for certain drink driving offences. While section 87(5)(b) requires that an order shall not be granted if the applicant's licence has been suspended or cancelled, or the person has been disqualified within the previous 5 years, section 87(5B)(a) excludes a suspension or disqualification that was set aside on appeal. For consistency, this amendment will cater for

circumstances where an order, based on special hardship, has been granted to a person whose licence has been suspended.

Amendment 18 inserts a new clause 62A which amends section 131 of the TO(RUM) Act. Subsection (1) corrects a reference within section 131(1C). Subsection (2) inserts new section 131(1C)(d) and (e) to clarify that a decision by the chief executive under a regulation to suspend a person's driver licence because of the accumulation of demerit points or following a conviction for an offence of driving more than 40km/h over the speed limit is not a decision that can be appealed under section 131.

Amendment 19 inserts new clauses 63A and 63B. Clause 63A(1) amends section 150(1A) of the TO(RUM) Act to enable a special hardship order to apply in relation to any Queensland driver licence held by the person during the period of the order. Clauses 63A(2) and (3) more closely align the regulation making power for special hardship orders that appears in section 150(1A) with the corresponding regulation making power for section 79E orders that appears in section 79E(4) of the TO(RUM) Act.

Clause 63B inserts new section 150AB into the TO(RUM) Act. This amendment clarifies that if there is any inconsistency between the rules of court and a provision of the *Transport Operations (Road Use Management—Driver Licensing) Regulation 1999* that deals with how and when an application to court under that regulation is to be made, the regulation provision will prevail to the extent of the inconsistency.

Amendment 20 amends clause 65 which amends Schedule 4 of the TO(RUM) Act. This amendment defines three new terms, 'section 79E driver', 'section 79E order' and 'special hardship orders'.